

05-83 WASHINGTON V. RECUENCO

DECISION BELOW: 110 P3d 188

LOWER COURT CASE NUMBER: 74964-7

QUESTION PRESENTED:

A single element missing or misdefined in jury instructions can be harmless error if, beyond a reasonable doubt, the error did not contribute to the verdict. *Neder v. United States*, 527 U.S. 1 (1999). In contrast, errors that affect the entire framework within which a trial proceeds, rather than errors in the trial process itself, are "structural" and will always invalidate a conviction. *Sullivan v. Louisiana*, 508 U.S. 275 (1993). It is undisputed in this assault case that the only weapon used was a firearm, but the verdict form for the enhancement failed to distinguish a "firearm" finding from a more generic "deadly weapon" finding -- the "firearm" finding carries a greater sentence.

The question presented here is whether error as to the definition of a sentencing enhancement should be subject to harmless error analysis where it is shown beyond a reasonable doubt that the error did not contribute to the verdict on the enhancement.

CERT. GRANTED 10/17/2005